IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

WP(C).No. 11920 of 2007(R)

CC.341/2005 of J.M.F.C.-II, CHENGANNUR

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PETITIONER:

C.A.UNNIKRISHNAN, 45 YEARS,
S/O.APPUGUPTAN, CHEMBANPADATH HOUSE,
VAKADAPURAM P.O., PALAKKAD.

BY ADV. SRI.A.F.SEBASTIAN
SMT.A.P.ABHIRAMI

RESPONDENTS:

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1. C.O.CHACKO, PEEDIKAPARAMBIL HOUSE,
PUTHEN KAVUMURIYIL, CHENGANNUR VILLAGE.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 11920 of 2007 R

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Dated this the 9th day of April, 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The case has been at the stage of defence evidence. The petitioner has come to this Court claiming to be aggrieved by an order passed by the learned Magistrate on the application filed by him under Section 315 Cr.P.C. The learned Magistrate, it is submitted, did not entertain the said prayer for examination of the accused under Section 315 Cr.P.C. and is proceeding to dispose of the case itself.

2. Copy of the order has not been produced so far. Admittedly Ext.P2 is the application filed. It is not filed by the accused under Section 315 Cr.P.C. His counsel has signed the petition on his behalf. The learned counsel for the petitioner submits that the matter stands posted for judgment to this date. The petitioner has several grievances against the course adopted by the learned Magistrate. It is submitted that the defence witness, though summoned, has not been examined. The petitioner submits that he has been denied an

opportunity to examine the witnesses and post the case for judgment even without hearing the petitioner's counsel.

3. Powers under Article 226/227 of the Constitution and Section 482 Cr.P.C. are to be invoked only in an exceptional case and sparingly in aid of justice. This law does not encourage challenge against interim orders passed. The policy of law is reflected clearly in Section 397(2) Cr.P.C. Normally such interlocutory orders must wait for their challenge along with the final order to be passed. Of course, there is jurisdictional competence for the court to invoke the powers under Article 227 of the Constitution or Section 482 Cr.P.C. I am not persuaded to agree, on the facts and circumstances of this case, that any such resort to the exceptional powers available to this Court can or need be invoked.

4. This Writ Petition is accordingly dismissed. But I may hasten to observe that the dismissal of this writ petition will not in any way fetter the rights of the petitioner to challenge any interlocutory order passed by the learned Magistrate in the course of the proceedings if there has been prejudice caused on account of such dismissal of application.

(R. BASANT)
Judge

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